

PAULA TROESTER SARAGOZA ET AL.

IBLA 80-939

81-6

Decided March 19, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting for purposes of recordation an affidavit of location for tunnel site N MC 164001 and dismissing a protest of mineral patent application N-24285.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Mining Claims: Patent -- Contests and Protests: Generally

At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for,

upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be sustained on the basis of the protestants' allegation that they are the owners of a conflicting claim which now is deemed abandoned and void as a matter of law.

APPEARANCES: Paula T. Saragoza, for appellants and pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Marguerite Troester, Helen Troester Draper, and Paula Troester Saragoza, hereinafter appellants, appeal from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated August 21 and August 29, 1980, which rejected appellants' affidavit of tunnel site location and dismissed their protest of a conflicting mineral patent application of Duval Corporation.

The decision of August 21, 1980, rejected appellants' affidavit of tunnel site location for failure to comply with filing requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.1-2(a), which provides:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal Lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

The decision appealed from states that appellants failed to file their affidavit of tunnel site location by October 22, 1979. The affidavit, which reached BLM on August 8, 1980, indicates that the Gold Cash #2 tunnel site was located in 1941 and recorded in the Lander County, Nevada recorder's office in December of that year.

[1] The above-cited regulation, implementing section 314(b) of FLPMA, 43 U.S.C. § 1744 (1976), is mandatory and must be complied with. Nila Tyrrel, 49 IBLA 267 (1980; John Walter Chaney, 46 IBLA 229 (1980). For the Gold Cash #2 tunnel site, located before October 21, 1976, appellants had until and including October 22, 1979, to record the location certificate with BLM, which appellants did not do. Failure to file timely the required certificates is deemed conclusively to constitute an abandonment of the claims by the owner and renders them void. Nila Tyrrel, *supra*; James E. Cooper, 48 IBLA 175 (1980).

Responding on appeal for appellants, Paula Troester Saragoza states in substance:

1. The decision is contrary to the laws governing tunnel site locations as set forth in the General Mining Laws of 1872.
2. The decision is prejudiced.
3. The decision denies us our right of protest and our right to a hearing of our protest of Mineral Patent N 24285.
4. We were not aware of, nor did we have access to 43 CFR 3833 prior to your decision of August 21, 1980.
5. The application for tunnel site location was submitted because of your (BLM) directive in 3830 N-912 and your office should have issued us 43 CFR 3833 so it could have been properly filed.
6. Nevada Law defines "a tunnel site is not a mining claim."

[2] The responsibility for complying with the recordation requirements rested with appellants. The fact that appellants may have been unaware of the requirements of recordation, while unfortunate, does not excuse them from compliance. All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Canyon View Mining Co., 49 IBLA 184 (1980); 44 U.S.C. §§ 1507, 1510 (1976). The Federal Land Policy and Management Act of 1976 (FLPMA) does not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

With regard to appellants' remaining assertions, that the BLM decision was prejudiced and contrary to the general mining laws of 1872 and Nevada State law, we find no evidence of that beyond appellants' bare assertion. Further, the mandate of the statute (FLPMA) is clear where the owner of an unpatented mining claim, millsite, or tunnel site located on or before October 21, 1976, had only until October 22, 1979, to file a location notice with BLM. Failure to comply is deemed conclusively to be an abandonment of the mining claim or site, and it is properly declared void. Nila Tyrrel, supra.

[3] With regard to appellants' protest of mineral patent application N-24285, docketed at IBLA 81-6, the regulations applicable to protests, 43 CFR Part 3870 make it clear that one who protests the mineral patent application of another must assert some justiciable adverse claim or interest of his own to the same land. The statute also requires that the protestant assert an adverse claim, 30 U.S.C. §§ 29, 30 (1976). See Turner v. Sawyer, 150 U.S. 578 (1893). Where the only assertion of a conflicting interest is ownership of a tunnel site claim which must be deemed conclusively to be abandoned and void as a matter of law, the protest is baseless, and BLM need not initiate the procedures prescribed by the regulations, supra, for the entertainment of a properly qualified protest. Because appellants failed to record their tunnel site location with BLM on or before October 22, 1979, as was required by FLPMA, supra, the tunnel site is therefore abandoned and void, and cannot be claimed adversely to the mineral patent application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

